

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 130.2070 Sales of Containers, Wrapping and Packing Materials and Related Products
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**TITLE 86: REVENUE
PART 130
RETAILERS' OCCUPATION TAX**

Section 130.2070 Sales of Containers, Wrapping and Packing Materials and Related Products

a) Definition

When used in this Section, the term "containers" includes all containers, wrapping and packing materials, bags, twines, container handles, wrapping papers, gummed tapes, cellophane, boxes, bottles, drums, cartons, sacks or other packing, packaging, containing and wrapping materials in which tangible personal property may be contained.

b) Sales for Resale

- 1) Sellers of containers to purchasers who sell tangible personal property contained in such containers to others are deemed to make sales of such containers to purchasers for purposes of resale, the receipts from which sales are not subject to the Retailers' Occupation Tax, if the purchasers of such containers transfer the ownership of the containers to their customers together with the ownership of the tangible personal property contained in such containers.
- 2) For example, a sale of fruit boxes to a packer who fills the boxes with fruit and sells the fruit in such boxes is a sale of the boxes to the packer for resale by him. If the packer places the boxes upon pallets that are then transferred to purchasers and the ownership of the pallets also passes to the purchasers, then the packer who purchases the pallets would be making a purchase for resale. There is no difference between a returnable container whose ownership is transferred with a deposit being taken and a nonreturnable container. This means that if the seller charges purchasers a deposit for pallets, or other containers, and there is an understanding that the pallet or other container can be returned by purchasers for refund or credit of the deposit amount, then the purchase of the pallets or other containers by sellers are nontaxable purchases for resale. Although sales of containers to purchasers who retransfer such containers to others as an incident to engaging in a service occupation are not subject to the Retailers' Occupation Tax, such transactions are governed by the Service Occupation Tax Act (see Subpart A of Service Occupation Tax, 86 Ill. Adm. Code 140).
- 3) Effective August 1, 1997, nonreusable tangible personal property sold to food and beverage vendors, including persons engaged in the business of operating

restaurants, cafeterias or drive-ins, is a sale for resale when it is transferred to customers in the ordinary course of business as part of the sale of food or beverages and is used to deliver, package, or consume food or beverages, regardless of where consumption of the food or beverage occurs. Examples of such items include, but are not limited to, paper and plastic cups, plates, baskets, boxes, sleeves, buckets or other containers, utensils, straws, placemats, napkins, doggie bags and wrapping or packaging materials that cannot be reused by the food or beverage vendor and which are transferred to customers as part of the sale of food or beverages. Such items do not include items which are used by the food vendor in conducting his business and which are not transferred to the customer, including, but not limited to, paper products, serving trays, serving dishes, utensils or condiment bottles.

c) Sales For Use or Consumption

- 1) Sellers of containers to purchasers who do not transfer the ownership thereof to others, but who intend such containers merely to provide a means of containing tangible personal property while in the process of being delivered to their customers, retaining and reusing or discarding the containers after such delivery is completed, and sellers of containers to purchasers who use such containers as a means of storing tangible personal property, are making sales for use or consumption, and their receipts from such sales are subject to the Retailers' Occupation Tax.
- 2) Also, paper towels and toilet tissues are deemed to be sold for use or consumption when sold to a purchaser for use in connection with the conduct of his business and not for resale as such.
- 3) Sales of paper napkins, drinking straws, paper cups and paper plates to operators of office buildings, hotels and the like for the use of their employees, tenants or guests are taxable retail sales.
- 4) Through July 31, 1997, sales of paper napkins, drinking straws, paper cups and paper plates to restaurants (including drive-in restaurants) and other vendors of food or beverages for use on the premises as serving equipment in lieu of more durable kinds of serving equipment (such as linen napkins, metal drinking straws, glass or porcelain cups and plates) are taxable retail sales. Sales of paper napkins, drinking straws, paper cups and paper plates to food or beverage vendors are nontaxable sales for resale if the items are resold for a direct and specific charge, or if the items are employed as containers for food or beverages contained therein and are transferred with the food or beverages to the purchaser thereof either by being delivered by the food or beverage vendor away from his premises to his customers or by being delivered on the premises of the food or beverage vendor to customers who take the packaged food or beverages away from such premises with them for consumption elsewhere (i.e., the so-called "carry-out trade"). In general, it may be assumed that paper sacks, boxes, cartons and paper cups with lids, when sold to a food or beverage vendor, are for resale within the meaning of this paragraph. The same is true of paper cups which are used in serving beverages or other tangible personal property from a vending machine.

- 5) When nonreusable paper products such as napkins, drinking straws, cups or plates are sold to a food or beverage vendor who uses some of these products on his premises in conducting his business, but who resells some of these products as hereinabove provided, and it is impracticable, at the time of the sale to such food or beverage vendor, to determine exactly how much of the purchase is for use and how much is for resale, the purchaser may determine, from his experience, approximately what percentage of his purchases of such paper products is for resale and may give the supplier a blanket Certificate of Resale certifying that that percentage of his purchases of such products in the future will be for resale. If the Department goes behind such a Certificate of Resale to check its accuracy, the Department will not disallow the Certificate of Resale if the percentage stated is reasonably close to what the facts actually are. Such a purchaser should redetermine and recertify such percentage to suppliers of such paper products at least every 12 months. If the purchaser uses some of the paper products which he has certified are for resale so that he does not pay tax to his suppliers on his purchases of such products, the purchaser is liable to pay the Use Tax directly to the Department on his cost price of such paper products.
- 6) When containers are sold to a purchaser for use or consumption, it is not material that the purchaser, after such containers have been used by him until they no longer have utility to him, sells such containers in order to recover as much as he can of the amount which he has invested in such containers.
- 7) Pallets are taxable upon purchase by sellers and do not qualify for the resale exemption where after sale and delivery of the products contained on the pallets the seller retains and reuses the pallets or discards them.

(Source: Amended at 24 Ill. Reg. 15104, effective October 2, 2000)